Office-Supreme Court, U.S.
FILED
NOV 10 1983
ALEXANDER L. STEVAS,
CLERK

83-240

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

LAWRENCE COUNTY AND THE
LAWRENCE COUNTY COMMISSIONERS, *Appellants*

vs.

LEAD-DEADWOOD SCHOOL
DISTRICT NO. 40-1, *Appellee*

On Appeal From The Supreme Court
Of The State of South Dakota

MOTION TO AFFIRM OR IN THE ALTERNATIVE TO DISMISS THE APPEAL

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November 8, 1983

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QUESTIONS PRESENTED

1. Whether the Supremacy Clause of the United States Constitution voids the South Dakota statute which distributes federal funds paid to Lawrence County by the Payments in Lieu of Taxes Act.

PARTIES TO THE PROCEEDINGS BELOW

Lead-Deadwood School District No. 40-1 was the Plaintiff in the trial court and the Appellant in the Supreme Court of South Dakota.

Lawrence County and the Lawrence County Commissioners were Defendants in the trial court and Appellees in the Supreme Court of South Dakota.

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LAWRENCE COUNTY AND THE
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vs.

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**On Appeal From The Supreme Court
Of The State of South Dakota**

MOTION TO AFFIRM THE DECISION OF THE SUPREME COURT OF SOUTH DAKOTA OR OR IN THE ALTERNATIVE TO DISMISS THE APPEAL

Lead-Deadwood School District will accept those portions of Appellant's Jurisdictional Statement entitled OPINIONS BELOW, JURISDICTION, CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED and STATEMENT OF THE CASE.

REASONS FOR DISMISSING THIS APPEAL OR IN THE ALTERNATIVE FOR AFFIRMING THE SUPREME COURT OF SOUTH DAKOTA'S DECISION

At the outset it must be stated, as it has in all the previous courts, that the Lead-Deadwood School District does *not* dispute that the payments under 31 USC 1601-1607 are to be made to Lawrence County. The Court must clearly under-Stand that the Lead-Deadwood School District believes that Lawrence County is the proper recipient of the payments made under the Payment in Lieu of Taxes Act, 31 USC Sections 1601-1607.

1. Supremacy Clause

The Supremacy Clause is a very practical and necessary part of the United States Constitution. Although rather simple in wording, the exact meaning of this clause has raised many questions. These questions began even before the Constitution was adopted. To allay fears about the potential abuse within the words of this phrase, Alexander Hamilton, in *Federalist No. 33*, discussed the necessity of the inclusion of the Supremacy Clause:

> Hence we perceive that the clause which declares the supremacy of the laws of the Union . . . only declares a truth which flows immediately and necessarily from the institution of a federal government.

Since that time, however, this area of the law has required extensive effort by the federal judiciary to achieve the proper relationship between federal and state statutes which regulate the same areas of conduct. Legislation by the federal and state governments in the same area does not necessarily mean that the state law must give way under the Supremacy Clause:

> Even if Congress has not completely foreclosed state legislation in a particular area, a state statute is void to the extent that it actually conflicts with a valid federal statute. A conflict will be found "where compliance with both federal and state regulations is a physical impossibility . . . ," *Florida Lime & Avocado Growers, Inc. vs. Paul*, 373 U.S. 132, 142-143, 10 L.Ed. 2d 248, 83 S.Ct. 1210 (1963), or where the state "law stands as an absolute obstacle to the accomplishment and execution of the full purposes and objections of Congress." *Hines vs. Davidowitz*, 312 U.S. 52, 67, 85 L.Ed. 2d 581, 61 U.S. 399 (1941); *Jones vs. Rath Packing Co.*, 430 U.S. 519, 526, 540-541, 51 L.Ed. 2d 604, 97 S.Ct. 1305 (1977), Accord *Decanas vs. Bica*, 424, U.S. 351, 363 47 L.Ed. 2d 43, 96 S.Ct. 933 (1976). *Ray vs. Atlantic Richfield Co.*, 435 U.S. 151, 158, 55 L.Ed. 2d 179, 98 S.Ct. 988 (1978).

Obviously the Supremacy Clause does not prohibit state regulation in areas dealt with by federal legislation and regulation. *Hancock vs. Train*, 426 U.S. 167, 179-180, 48 L.Ed. 2d 555, 96 S.Ct. 2006 (1976). Because the nullification of state laws under the Supremacy Clause of the United States Constitution is an extreme action by the Court, conflict between federal and state laws should not be sought where none exists. *Exxon Corp. vs. Governor of Maryland*, 437 U.S. 117, 130, 57 L.Ed. 2d 91, 98 S.Ct. 2207, (1978). See also *Seagram & Sons, Inc. vs. Hostetter*, 384 U.S. 35, 16 L.Ed. 2d 336, 86 S.Ct. 1254 (1966). The "absolute obstacle" and "physical impossibility" tests set forth above have not been met.

There is no doubt that the federal statutes are paramount in the area of payments in lieu of taxes under the program established by P.L. 94-565: The land is federal land and the payments are federal funds. However, state legislation in the area is possible when such laws are not in conflict or do not burden the federal enactments. A common sense reading of

the federal and state statutes in question gives meaning to both statutes without destroying the original purpose of the federal law. In fact, the state law simply implements the federal purpose. As the United States Supreme Court held in one of the landmark decisions in the Supremacy Clause area:

> The test of whether both federal and state regulations may operate or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives. *Florida Lime & Avocado Growers, Inc. vs. Paul*, 373 U.S. 132, 142, 10 L.Ed. 2d 248, 83 S.Ct. 1210 (1963) **reh. denied**, 374 U.S. 858, 10 L.Ed. 2d 1082, 83 S.Ct. 1861 (1964).

Several factors support the School District's contention that its common sense approach to this problem should be adopted by this Court in determining the issue presented in this action.

Soon after the passage of SDCL 5-11-6 several questions were asked of the Attorney General of South Dakota concerning the applicability of SDCL 5-11-6 to P.L. 94-565 funds received by the counties. In answer to the question of the applicability of SDCL 5-11-6 when P.L. 94-565 specifically directs the payments to a general purpose unit of government, the Attorney General of South Dakota stated, in part, that

> These statutory provisions, however, do not make it unlawful or inappropriate for the state legislature to require that such funds to be utilized in a manner similar to any other tax monies raised by the county. Absent federal restrictions on the use of these funds for school purposes, these funds can be used for legitimate governmental purposes such as schools. *Kendall vs. Towns County*, 247 S.E. 2d 577 (1978). AGR 80-12, P.3.

The issue presented in this action also requires a discussion of the relationship between the State of South Dakota and the several counties of the state. Article IX, Section 1 of the South Dakota Constitution states, in part, that "the Legislature shall have plenary powers to organize and classify units of local government..." In Title 7 of the South Dakota Codified Laws, the State Legislature has not only set the county boundaries and established county officers and their duties, but has also set forth a wide range of laws governing general county government. In addition to this development of county government, the State Legislature has also, in Chapter 10-12 of the South Dakota Codified Laws, established statutory guides for state and local (meaning counties and municipalities) property tax levies. Having followed these state statutory guidelines in setting tax rates and determining the distribution scheme of their normal tax revenues, it is incongruous for Lawrence County to now say that federal funds they receive *in lieu of these same taxes* are not required to be distributed, in accordance with state law in the same manner as other tax revenues are distributed. As political subdivisions of the state, the counties are clearly susceptible to state guidance in the management of their fiscal affairs. SDCL 5-11-6 is state guidance to the counties for payments they receive in lieu of taxes. Combining this state-county relationship, then, with the compatible reading of SDCL 5-11-6 and P.L. 94-565 helps to show the fallacy of Lawrence County's claim.

To stretch the meaning of the phrase "for any governmental purpose," as Lawrence County suggests, is incorrect. The design behind the inclusion of the phrase "for any governmental purpose" in P.L. 94-565 is to eliminate the restrictions on the money's use. Under many federal funding programs, the money funneled to the state or county can be used only for roads, schools or other specified uses. The questioned phrase in P.L. 94-565 simply eliminates these restrictions.

The School District seriously questions the applicability of either *Kendall vs. Towns County*, 247 S.E. 2d 577 (GA 1978) or *Meade Township vs. Andrus*, Civ. No. G77-496 CA7 (W.D. Mich. October 31, 1979). Both of these decisions have been previously cited by Lawrence County to support their claims concerning P.L. 94-565. Neither provides such support. In *Kendall*, the Court stated:

> Since under the law as written, it is provided that the funds may be used for any governmental purpose, the Secretary recognized the "limitations cannot be placed upon the use of these funds by regulations." Thus, in dispensing the funds there are no provisions in the regulations stating how the funds are to be used." *Kendall, supra* at 579.

This excerpt actually supports the School District's basic contention. According to *Kendall*, the Secretary of the Interior cannot, by regulation, require that the P.L. 94-565 funds be used to support only schools, only roads, or only rural sewage systems. This reading is argument that P.L. 94-565 funds are to be used to provide support, in the same manner as regular tax revenues provide support, of all the governmental services supplied by the county.

Meade Township, supra, discusses the question of the proper unit of local government to receive, directly from the federal government, the P.L. 94-565 monies. Because of the importance of townships in Michigan, the federal trial court ordered the Secretary of the Interior to restudy the validity of his determination that the county is the proper unit of local government in Michigan. *Meade Township, supra* at 12-14. The question presented in the present action is not addressed in *Meade Township*. The School District does not question the propriety of the county as the unit of government in South Dakota which should initially receive the P.L. 94-565 funds.

The only real support found in *Meade Township* is s[illegible] port for the School District's position. As the Court correctly points out:

> The intended effect of the payments to local units of government is to relieve the fiscal burden of these tax exempt entitlement lands within their boundaries. *Meade Township, supra* at 2.

2. Public Policy

When the Constitution of the State of South Dakota was adopted by the people of South Dakota it clearly stated and continues to state that the Legislature is authorized to create other political subdivisions to administer the governmental requirements of the people. The State of South Dakota did not create separate sovereign governments. Lawrence County is not a sovereignty unto itself. It is subject to legislative enactment. Lawrence County is not immune to legislative enactment.

Congress passed Public Law 94-565. Under that law, Lawrence County is to receive monies "in lieu of taxes" that would have been paid if the property owned by the United States of America was owned by private individuals. Lawrence County is the appropriate governmental entity that is to receive the monies under Public Law 94-565. The Lead-Deadwood Independent School District does not challenge that Lawrence County is the appropriate recipient of these funds.

Every year during budget time the school districts within Lawrence County go to the county commissioners and submit their budgets to them. The county commissioners then determine in their sole and exclusive discretion how the tax revenues and other revenues of Lawrence County will be

divided so that the school districts can function as separate governmental entities within the county. One must presume that the County Commissioners of Lawrence County distribute monies in a fair, equitable and just manner.

The South Dakota Legislature as the controlling legislative body over all county governments, enacted SDCL 5-11-6 in 1979. The statute merely states that the county auditor is to distribute the federal payments which are in lieu of taxes in the same manner as taxes are distributed. The county commissioners meet, discuss and decide how to distribute tax dollars in Lawrence County. The statute does not say the county commissioners must distribute Public Law 94-565 monies to the school district. The Lead-Deadwood School District does not wish Lawrence County to distribute all Public Law 94-565 monies to it. The statute states the school district is entitled to their proportionate share of Public Law 94-565 monies. Nothing more, nothing less. 31 USC Section 1601, P.L. 94-565 Section 1, says that "such payment may be used by such unit of government for any governmental purpose." That is exactly what the Lead-Deadwood School District wishes to occur.

There is no conflict in the statute that directs the county to distribute Public Law 94-565 monies in the same way that they have decided to distribute tax monies. The Federal statute says that the county is to distribute this money for any governmental purpose. The county commissioners determine how all revenues will be used. The state law requires that in lieu of funds are to be distributed as other taxes. Distributing money to school districts is certainly a governmental purpose.

The County Commissioners of Lawrence County make no bones on how they feel. They have told the school district if they want any of this money they have to come and ask for it.

Then the county will decide whether or not to dole it out to them. This is pure unadulterated politics. The county commissioners don't want to distribute the money to the school district because they do not want to raise their taxes to make up the difference. The commissioners want to pass the "tax" political football to the school district. They want to advise the tax payers of this county that they, the county commissioners, are not raising taxes, the school districts are.

The Lawrence County Commissioners duck behind the Supremacy Clause for protection. Judge Moses agreed with them. Judge Moses stated in his Memorandum Opinion the school district wants all the monies under Public Law 94-565. That is not true. That is not at all what the Lead-Deadwood School District wants. They want the county to distribute the in lieu of tax money from the federal government in the same just, equitable and reasonable way the county commissioners have decided to distribute other tax dollars. It seems ludicrous that a school district must sue the county commissioners and force them to distribute money in a way the county commissioners have already determined to be fair, just, equitable and reasonable.

Other than the proposition that this stance is pure politics on the part of the commissioners, the Lead-Deadwood School District cannot understand why the county commissioners have adopted the attitude on Public Law 94-565 monies they have. Why isn't the school district entitled to its fair, just, reasonable and equitable share of these in lieu of tax monies? What is so onerous about SDCL 5-11-6 that the Lawrence County Commissioners cannot abide by it? Isn't supporting school districts a governmental purpose? Isn't the education of the youth of South Dakota the prime responsibility of local governmental entities?

CONCLUSION

The federal program making payments to counties in lieu of taxes for federal lands within the counties and the state statute which provides for the distribution of these federal payments in the same manner as taxes are distributed are totally compatible. When read with a common sense approach, the two acts are not only compatible, but also practical. The federal statute defines the point of distribution of the funds; the state statute delineates the plan for distribution of the funds.

Respectfully submitted,

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Dated: November 8, 1983